

(3) When applying to the Board for an exemption for the development of export markets for tart cherries or cherry products (including juice and juice concentrate) in countries other than Canada and Mexico, including the expansion of sales in existing export markets, handlers must detail the nature of their product, specify whether such product differs from current products being sold in export markets, and estimate the anticipated short and long term sales volumes for the requested exemption.

(4) When applying to the Board for an exemption for experimental purposes, handlers must indicate the preliminary and/or developmental experimental activity. Such experimental purposes should be intended to result in new products, new applications and/or new markets for existing tart cherry products. Any exemption for experimental work shall be limited in scope, duration and volume which the proposing party shall specify at the time a request for exemption is made. In no case shall an exemption for experimental purposes last longer than five years or exceed 100,000 pounds raw product equivalent per handler of tart cherries during the duration of the experiment.

(d) *Review of applications.* A Board appointed subcommittee of three persons which shall include the manager (or a Board member acting in the Manager's stead), the public member and one industry person who is not on the Board, shall review applications for exemption or renewal of exemption and either approve or deny the exemption. Any denial of an application for exemption or renewal of an existing exemption shall be served on the applicant by certified mail and shall state the reasons for the denial. Within 10 days after the receipt of a denial, the applicant may file an appeal, in writing, with the Deputy Administrator, Fruit and Vegetable Programs, supported by any arguments and evidence the applicant may wish to offer as to why the application for exemption or renewal of exemption should have been approved. The Deputy Administrator upon consideration of such appeal will take such action as deemed appropriate with respect to the application for exemption or renewal of exemption.

(e) *Progress report.* Each handler that is granted an exemption must submit to the Board an annual progress report, due May 1 of each crop year. The progress report shall include the results of the exemption activity (comparison of intended activity with actual activity) for the year in its entirety, the volume of exempted fruit, an analysis of the success of the exemption program, and such other information as the Board may request.

(f) *Diversion credit; failure to meet terms and conditions of exemption.* Handler diversion certificates for exempt uses shall be issued to handlers provided that terms and conditions applicable to exempt uses are satisfied. Diversion certificates will not be issued to handlers for any volume of tart cherry products for which such terms and conditions are not satisfied and such cherries would be subject to all of the terms and conditions of §§ 930.41, 930.44, 930.51, 930.53, and §§ 930.55 through 930.57.

(g) *Failure to meet terms and conditions for exemption.* Upon termination of an exemption, any volume of tart cherry products that were granted an exemption but were not utilized for the authorized exempt purpose would be subject to all of the terms and conditions of §§ 930.41, 930.44, 930.51, 930.53, and §§ 930.55 through 930.57.

[63 FR 405, Jan. 6, 1998, as amended at 65 FR 35267, June 2, 2000; 66 FR 39413, July 31, 2001]

§ 930.163 Deferment of restricted obligation.

A handler may obtain a surety bond on restricted percentage cherries to be posted to temporarily defer the date that inventory reserves must be held. The surety bond must be posted at two times the market value of the quantity of cherries for which the holding obligation is being deferred. The Board can temporarily defer the date inventory reserve cherries must be held to any date requested by the handler. However, this date shall not be later than 60 days prior to the end of the crop year. The deferment shall be conditioned on the execution and delivery by the handler to the Board of a written undertaking within 30 days after the Secretary announces the final restricted percentage under § 930.51. The

written undertaking (required to be secured by a bond or bonds with a surety or sureties acceptable to the Board) must guarantee that on or prior to the deferment date requested by the handler the handler will have fully satisfied the restricted percentage obligation. On or prior to the deferment date requested by the handler, the handler will have to fully satisfy the restricted percentage obligation. In the event, a handler has posted the surety bond, reached the deferment date deadline and does not have cherries in the inventory reserve to cover his/her inventory reserve obligation, the bond will be forfeited to the Board. The Board will then buy cherries to fulfill that handler's obligation.

[66 FR 35891, July 10, 2001]

Subpart—Assessment Rates

§ 930.200 Handler assessment rate.

On and after July 1, 2003, the assessment rate imposed on handlers shall be \$0.0021 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products.

[68 FR 57324, Oct. 3, 2003]

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

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AUTHORITY: 7 U.S.C. 601-674.